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9 Proposed Attorneys for Chapter 11 Debtor and  
10 Debtor-in-Possession

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**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SANTA ANA DIVISION**

In re:

THE SOURCE HOTEL, LLC, a  
California limited liability company,  
  
Debtor and Debtor in Possession.

Case No.: 8:21-bk-10525-ES

Chapter 11

**OPPOSITION TO MOTION OF SHADY  
BIRD LENDING, LLC FOR ORDER  
DESIGNATING CHAPTER 11 CASE AS  
SINGLE ASSET REAL ESTATE CASE  
PURSUANT TO 11 U.S.C. §§ 101(51B) AND  
362(d)(3); DECLARATION OF DONALD  
CHAE IN SUPPORT THEREOF**

Hearing:

Date: April 15, 2021

Time: 10:30 a.m.

Place: ZoomGov

1 The Source Hotel, LLC, a California limited liability company and the chapter 11 debtor  
2 and debtor-in-possession herein (the “Debtor”), hereby files this opposition (the “Opposition”) to  
3 that certain *Motion Of Shady Bird Lending, LLC For Order Designating Chapter 11 Case As*  
4 *Single Asset Real Estate Case Pursuant To 11 U.S.C. §§ 101(51B) And 362(d)(3)* [Doc. No. 49]  
5 (the “Motion”) filed by Shady Bird Lending, LLC (“Shady Bird”).

6 **I.**

7 **INTRODUCTORY STATEMENT**

8 Pursuant to the Motion, Shady Bird seeks the entry of a Court order designating the  
9 Debtor’s chapter 11 bankruptcy case as a “single asset real estate” case pursuant to 11 U.S.C. §§  
10 101(51B) and 362(d)(3).

11 The Debtor has spent an extraordinary amount of money, time, and resources during the  
12 last several years developing and constructing a seven-story full-service hotel with 178 rooms in  
13 the City of Buena Park, County of Orange, State of California (the “Hotel”). The Debtor does  
14 not actually own the real property (the “dirt”) on which the Hotel is situated, but is a lessee  
15 pursuant to a 99-year ground lease for such real property. Upon completion, the Hotel will  
16 include conference rooms, an executive lounge, fitness center, restaurant, bars, and cleaning  
17 services. The Hotel is not simply a piece of undeveloped land upon which the Debtor “hopes” to  
18 one day develop and construct income-generating businesses. The Hotel is, at this point,  
19 approximately 85% complete, with the outstanding construction work consisting of mostly  
20 “finish work” such as the installation of flooring and carpeting, lighting, appliances, trade  
21 fixtures, furniture, furnishings and equipment already purchased by the Debtor. While the  
22 Debtor acknowledges that the Hotel is not yet complete and is not currently generating any  
23 income, given the mostly completed state of construction of the Hotel, and given further the fact  
24 that, upon completion, the Debtor will be operating substantial business other than the mere  
25 ownership and management of real property, including, without limitation, the operation of a  
26 full-service hotel as well as the operation of a restaurant and bars within the premises, the Debtor  
27 submits that the Hotel falls outside the definition of a “single asset real estate” under 11 U.S.C. §  
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101(51B).

II.

**STATEMENT OF RELEVANT FACTS**

**A. Background.**

1. On February 26, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”). The Debtor is continuing to manage its financial affairs and operate its bankruptcy estate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. Since 2014, the Debtor has been developing the Hotel, which will include conference rooms, an executive lounge, fitness center, restaurant, bars, and cleaning services. The Hotel is part of a larger 12.8-acre mixed-use development project (the “Master Development”), which includes a 400,000 square-foot retail center and a 50,000 square-foot seven-story office building which were completed in 2016. The Debtor does not own the real property on which the Hotel is being constructed (which is located at the southeast corner of the Master Development), but is a lessee pursuant to a 99-year ground lease for such real property (the “Ground Lease”) with the Debtor’s affiliate, The Source at Beach, LLC.

3. Construction of the Hotel began in 2016. To finance the construction of the Hotel, on May 24, 2016, the Debtor obtained a \$29.5 million construction loan (the “Loan”) from Evertrust Bank (“Evertrust”) as well as financing by three tranches of EB-5 investments totaling \$35.5 million. The Debtor’s obligations under the Loan are secured by liens against substantially all of the Debtor’s assets, including the Hotel and the Debtor’s leasehold interest in the real property that is the subject of the Ground Lease (the “Leasehold Interest”). The original maturity date for the Loan was December 1, 2017, but was extended to November 1, 2019 pursuant to written extension agreements entered into by the parties.

4. Through October 2019, approximately 85% of the Hotel construction had been completed, including: substantial completion of the core and shell, exterior painting, porte cochère, street lighting, ceiling framing, kitchen framing and glass block installation, food storages, all glass

storefronts, electrical wiring and switchgear, guestroom flooring, ceiling fixtures, pool bar canopy structure, deck drains, window washing system, roof membrane, roof ductwork and HVAC vibration installation; nearly complete installation of bathroom fixtures (95%), acoustic ceiling system (80%), HVAC electrical connections (90%), piping for HVAC and plumbing equipment (95%), and rooftop ductwork (99%). In addition, substantial materials have been procured and/or fabricated and are ready for installation pending completion of other items, such as first and second floor flooring, corridor carpeting, millwork (wall and ceiling panels, pool bar), passenger elevators, fire sprinklers, egress and accent lighting, pool equipment, guest room doors, locks and closures, bathroom fixtures, and rooftop HVAC equipment. Current photos of the Hotel, which reflect the current state of completion of the Hotel, are attached as **Exhibit A** to the Declaration of Donald Chae annexed hereto (the “Chae Declaration”).

5. The approximately 15% of the Hotel construction which remains outstanding consists of mostly “finish work” such as the installation of flooring and carpeting, lighting, appliances, trade fixtures, furniture, furnishings and equipment already purchased by the Debtor (collectively, “FF&E”). The Debtor and M+D believe that the Debtor can successfully complete the construction of the Hotel within 6-12 months with additional funding of approximately \$12,000,000 - \$16,000,000 (which funding would provide for, among other things, the satisfaction of valid and effective mechanics’ liens).

6. In late 2019, Evertrust refused to issue the remaining \$4 million of the Loan, claiming a cost overrun on the construction of the Hotel. As a result of Evertrust’s refusal to provide the final \$4 million of the Loan, the Debtor was forced to cease construction activities. However, the Debtor believes strongly that, had Evertrust funded the final \$4 million as expected, construction of the Hotel would have been completed, as the Debtor believes that its contractors would have carried fifty percent of the cost overrun and the Debtor and its affiliates would have covered the remaining fifty percent of the overrun.

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**B. Events Leading To Debtor's Bankruptcy Filing.**

7. When Evertrust refused to issue the remaining \$4 million of the Loan, the Debtor immediately and actively sought to refinance the Loan. The Debtor began discussions with a new lender named Hall Structured Finance (“Hall”) in the fall of 2019 and was ultimately able to reach an agreement with Hall for refinancing in the total sum of \$42 million. During the course of the Debtor’s refinancing discussions with Hall, the Debtor kept Evertrust apprised of all developments, and even provided Evertrust with a copy of the loan commitment letter from Hall in early 2020. The Debtor and Hall were on the verge of closing on the refinancing, with a target closing date of March 20, 2020, when local, county, and State officials issued lockdown orders as a result of the COVID-19 pandemic. At that point, Hall put an indefinite hold on the closing of the refinancing with the Debtor.

8. As a result, the Debtor went back to Evertrust and, between March 2020 and December 2020, engaged in active forbearance negotiations with Evertrust to obtain a further extension of the Loan maturity date so that the Hotel could recover from the effects of the COVID-19 pandemic, and the Debtor could obtain refinancing or additional construction financing and ultimately recommence construction of the Hotel.

9. In the summer of 2020, while the Debtor and Evertrust were still engaged in forbearance negotiations, Evertrust commenced litigation against the guarantors of the Loan, Donald Chae and Min Chae, and recorded a Notice of Default against the Hotel (the “NOD”). In light of such litigation and the recordation of the NOD, and given the ongoing COVID-19 pandemic, the Debtor requested that Evertrust convert the Loan (in the funded amount of approximately \$25 million) into a two-year term loan, and even offered to set aside one year’s worth of loan payments in escrow as assurance of repayment of such two-year term loan. Evertrust declined the Debtor’s offer.

10. During the latter half of 2020, while the Debtor was engaged in forbearance negotiations with Evertrust, the Debtor was also working actively with its loan broker, Ed Choi, to identify and obtain alternative financing for the Hotel. In November or December, 2020, Mr. Choi

1 advised the Debtor that he had introduced Michael Schlesinger of Cambra Realty (“Cambra”) to  
2 Evertrust to potentially purchase the Loan from Evertrust.

3 11. Ed Choi, who represented that he was in direct discussions with Mr. Schlesinger  
4 regarding Cambra’s pending purchase of the Loan, repeatedly assured the Debtor that, in  
5 conjunction with its purchase of the Loan, Cambra would extend the Loan maturity date for two  
6 years (at which time the Debtor could purchase back Cambra’s interest in the Loan for \$24-25  
7 million) and Cambra would provide additional construction financing of \$10-14 million so that the  
8 Debtor could complete the construction of the Hotel. The Debtor and the guarantors repeatedly  
9 requested that the foregoing terms be reduced to writing and were assured by Ed Choi and Mr.  
10 Schlesinger that the terms would be set forth in a written offer or term sheet. Ultimately, the terms  
11 discussed by the Debtor, the guarantors, Ed Choi and Mr. Schlesinger were never reduced to  
12 writing.

13 12. On December 30, 2020, Donald Chae was asked to meet with Ed Choi and Mr.  
14 Schlesinger at an office building in Beverly Hills, where they introduced him to Ronald Richards  
15 for the first time, introducing Mr. Richards only as an attorney and not as the principal for Shady  
16 Bird. Unbeknownst to Debtor, Shady Bird had just purchased Evertrust’s interests in the Loan the  
17 day before at a significant discount, for a reported purchase price of approximately \$19 million.  
18 Thereafter, the Debtor was advised that Mr. Richards of Shady Bird would be the Debtor’s new  
19 contact.

20 13. On January 2, 2021, the Debtor received initial deal points in writing from Mr.  
21 Richards which were generally egregious and not at all reflective of the terms that had been  
22 previously discussed by the parties. On January 7, 2021, the Debtor returned a written counteroffer  
23 which reflected the terms that the Debtor understood had been previously agreed to by the parties.  
24 In response to the Debtor’s counteroffer, Mr. Richards requested information from the Debtor  
25 regarding its maintenance contracts, architectural contracts, and construction management contract  
26 with Swinerton Builders.

1           14. At this point, the relationship between the Debtor and Shady Bird was severely  
2 strained, and the Debtor feared that Shady Bird had no intention of following through with the  
3 terms that the parties had previously discussed, that Shady Bird was not engaged in negotiations  
4 with the Debtor in good faith and was instead gathering information to take the Hotel from the  
5 Debtor.

6           15. Ultimately, the Debtor's concerns about Shady Bird were validated when, on  
7 February 8, 2021, Shady Bird filed a complaint against the Debtor in the Superior Court of the  
8 State of California for the County of Orange ("Superior Court") for (i) specific performance and  
9 appointment of a receiver, and (ii) waste, thereby commencing the Superior Court action bearing  
10 the case number 30-2021-01183489-CU-OR-CJC (the "State Court Action"). Shady Bird also  
11 took steps to immediately foreclose on the Hotel and issued a Notice of a Trustee's Sale for the  
12 Hotel to be held on March 1, 2021.

13           16. Shortly after filing its complaint to initiate the State Court Action, Shady Bird filed  
14 an ex parte application for an order appointing a receiver and other related relief. On February 17,  
15 2021, the Superior Court entered an order in the State Court Action appointing Bellann R. Raile as  
16 Receiver to, among other things, take possession of the Hotel and all goods, furniture, fixtures, and  
17 equipment attached and/or related to the Hotel.

18           17. As a result of all of the foregoing, the Debtor sought chapter 11 bankruptcy  
19 protection in order to prevent the impending foreclosure of the Hotel, to regain possession of the  
20 Hotel and related assets and obtain refinancing or investments to enable the Debtor to complete  
21 construction of the Hotel, and to be afforded a reasonable opportunity to restructure its financial  
22 affairs and repay its debts in an orderly fashion.

23 **C. The Debtor's Reorganization Efforts And Strategy.**

24           18. The Debtor's primary assets consist of the Hotel, the Leasehold Interest, and the  
25 FF&E. The Debtor believes that the current value of the Hotel in "as is" condition is  
26 approximately \$50,000,000 and that its fair market value upon completion will be at least  
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1 \$60,000,000.<sup>1</sup> As reflected in the Debtor's Schedules, the Debtor believes that the total value of  
2 the FF&E (calculated at cost, excluding fabrication labor costs) is approximately \$2,700,000.<sup>2</sup>

3 19. The Debtor's primary secured creditor is Shady Bird. According to the Notice of  
4 Trustee's Sale recorded by Shady Bird on February 3, 2021,<sup>3</sup> Shady Bird contends that the  
5 current balance of the Loan is approximately \$30,720,000. The Debtor's obligations under the  
6 Loan are secured by liens against substantially all of the Debtor's assets, including the Hotel, the  
7 Leasehold Interest, the FF&E, and the Debtor's cash.

8 20. There are a number of subcontractors that have recorded mechanics' liens against  
9 the Debtor and/or Hotel. As reflected in the Debtor's Schedules, the Debtor believes that the  
10 total amount of the mechanics' liens recorded against the Debtor and/or Hotel is approximately  
11 \$2,900,000.<sup>4</sup> Some of these recorded mechanics' liens are disputed by the Debtor. In addition,  
12 there appear to be a number of other mechanic's liens asserted against the Hotel; however, such  
13 purported liens do not appear to have been properly perfected and are therefore likely invalid.

14 21. The Debtor also received three tranches of EB-5 loans totaling approximately  
15 \$35.5 million from Beach Orangethorpe Hotel, LLC, Beach Orangethorpe Hotel II, LLC, and  
16 Beach Orangethorpe Hotel III, LLC (collectively, the "EB-5 Lenders"). The Debtor's  
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18 <sup>1</sup> Pursuant to Rule 201 of the Rules of Evidence ("Evidence Rules"), the Debtor  
19 respectfully requests that the Court take judicial notice of the appraisal report of the Hotel  
20 dated October 14, 2019, which is attached as Exhibit 4 to the Declaration of Donald Chae  
21 annexed to that certain *Opposition To Motion Of Shady Bird Lending, LLC For Order*  
22 *Excusing State Court Receiver From Turnover Of Assets Pursuant To 11 U.S.C. § 543* filed  
23 concurrently herewith (the "Opposition to Receiver Motion"). As reflected in the foregoing  
24 appraisal report, the Hotel was appraised at an "as is" value of \$40,900,000 as of October 14,  
25 2019, was projected to have a value of \$55,800,000 upon completion, and was projected to  
26 have a value of \$61,300,00 upon stabilization. The Debtor's manager is in the process of  
27 obtaining an updated appraisal of the Hotel.

28 <sup>2</sup> Pursuant to Evidence Rule 201, the Debtor respectfully requests that the Court take  
judicial notice of the Debtor's Schedule A/B Assets – Real and Personal Property [Doc. No.  
32, pages 3-25 of 66].

<sup>3</sup> Pursuant to Evidence Rule 201, the Debtor respectfully requests that the Court take  
judicial notice of the Notice of Trustee's Sale, which is attached as Exhibit E to the Declaration  
of Donald Chae annexed to the CC/Financing Motion [Doc. No. 21 pages 219-235 of 358].

<sup>4</sup> Pursuant to Evidence Rule 201, the Debtor respectfully requests that the Court take  
judicial notice of the Debtor's Schedule D: Creditors Who Have Claims Secured by Property  
[Doc. No. 32, pages 26-37 of 66].



obligations under the loans from two of the EB-5 Lenders (*i.e.*, Beach Orangethorpe Hotel, LLC and Beach Orangethorpe Hotel II, LLC) are secured by junior liens against the Hotel and the Leasehold Interest.<sup>5</sup>

22. The Debtor believes that the EB-5 Lenders and the vast majority of its creditors will support the Debtor's efforts to reorganize through its chapter 11 bankruptcy case. The Debtor makes no secret of its intended exit strategy in this case. The Debtor has been, and continues to be, engaged in active discussions with numerous prospective lenders regarding the terms for debtor-in-possession financing, which will provide the Debtor with the funding necessary to complete the construction of the Hotel, service debt, and operate the Hotel until operations can be stabilized. The Debtor has already received a written commitment letter from one prospective lender for debtor-in-possession financing in the sum of \$17,900,000 but, as noted above, the Debtor is still in the process of "vetting" terms with a number of prospective lenders. The Debtor intends to finalize loan terms with a lender and file a motion for Court approval of debtor-in-possession financing in this case in an expeditious manner.

23. In conjunction with obtaining debtor-in-possession financing, the Debtor intends to file a plan of reorganization in this case which restructures and provides for repayment of the Debtor's secured debt (including the debt owed to Shady Bird) based upon market terms, and provides for a recovery to the Debtor's general unsecured creditors who would otherwise receive nothing (particularly upon a foreclosure of the Hotel by Shady Bird).

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<sup>5</sup> Pursuant to Evidence Rule 201, the Debtor respectfully requests that the Court take judicial notice of the Deeds of Trust recorded against the Hotel by Beach Orangethorpe Hotel, LLC and Beach Orangethorpe Hotel II, LLC, which are attached as Exhibit H to the Declaration of Donald Chae annexed to the CC/Financing Motion [Doc. No. 21 pages 303-350 of 358].

1 **III.**

2 **ARGUMENT**

3 11 U.S.C. § 101(51B) defines the term “single asset real estate” as follows:

4 “real property constituting a single property or project other than  
5 residential property with fewer than 4 residential units, which  
6 generates substantially all of the gross income of a debtor who is  
7 not a family farmer and on which no substantial business is being  
8 conducted by a debtor other than the business of operating the real  
9 property and activities incidental thereto.”

10 11 U.S.C. § 101(51B).

11 The movant bears the burden of proof to demonstrate that the debtor’s property or project  
12 is a “single asset real estate” under the Bankruptcy Code. *In re Hassen Imports Partnership*, 466  
13 B.R. 492, 507 (Bankr. C.D. Cal. 2012); *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006) (a  
14 “moving party ... carries the burden of proof on all factors.”); *see also In re Alvion Properties,*  
15 *Inc.*, 538 B.R. 527, 532 (Bankr. S.D. Ill. 2015).

16 There is no question that, if the Hotel was completed and operating, it would **not**  
17 constitute a “single asset real estate” within the definition of 11 U.S.C. § 101(51B).

18 In *Centofante v. CBJ Development, Inc. (In re CBJ Development, Inc.)*, 202 B.R. 467 (9th  
19 Cir. BAP 1996), the Ninth Circuit Bankruptcy Appellate Panel held that the debtor’s operation of  
20 a gift shop, restaurant and bar in its hotel constituted substantial other business and, thus, the  
21 debtor’s hotel was not a single asset real estate. In *CBJ Development*, the debtor’s primary asset  
22 consisted of a 63-room hotel, and all of the debtor’s income was generated from the rental of  
23 hotel rooms and the operation of the bar, restaurant, and gift shop located on the hotel premises.  
24 Notably, at the time that the debtor’s bankruptcy case filed, the hotel’s gift shop, restaurant, and  
25 bar were closed for renovations which the debtor had begun shortly after obtaining possession of  
26 the hotel. However, at the time the bankruptcy case was filed, the debtor was operating the  
27 hotel. The debtor’s secured creditor filed a motion for relief from the automatic stay based upon  
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1 the assumption that the debtor was a “single asset real estate” debtor. By the time that the  
2 secured creditor’s motion was heard, the debtor’s gift shop was open and the restaurant and the  
3 bar were about to reopen. The Bankruptcy Appellate Panel noted that a full-service hotel such as  
4 the debtor’s must employ a substantial number of people since “[r]ooms must be cleaned, sheets  
5 and towels laundered, phone and other services provided[,]” that “the operation of the [debtor’s  
6 h]otel requires substantially more day to day activity than does the operation of an apartment  
7 complex[,]” and therefore the operation of the hotel is sufficiently active in nature to constitute a  
8 business other than the mere operation of property. *Id.* at 472.

9 Similarly, in *In re Whispering Pines Estate, Inc.*, 341 B.R. 134, 136 (Bankr. D. N.H.  
10 2006), the court found that the operation of a hotel, even one that does not include services such  
11 as a gift shop or a restaurant, is sufficiently active in nature to constitute a business other than  
12 mere operation of property. *See also, In re Iowa Hotel Investors, LLC*, 464 BR. 848 (Bankr.  
13 N.D. Iowa 2011) (holding that a hotel that has no gift shop, restaurant, or bar, but has conference  
14 rooms that may be rented separate and apart from guest rooms, is not a single asset real estate).

15 The Bankruptcy Appellate Panel in *CBJ Development* did note that the use of the present  
16 tense by Congress in Bankruptcy Code Section 101(51B) suggests that only current activities  
17 may be considered in determining whether the debtor is conducting substantial business activities  
18 other than the operation of the property, and that a non-operational hotel may be considered a  
19 single asset real estate because it has “no substantial business” other than the business of  
20 operating the real property and activities incidental thereto. The Panel stated that “[a]ny other  
21 conclusion would allow all debtors with unrented commercial space to evade the provisions  
22 applicable to single asset real estate debtors in 11 U.S.C. § 362(d)(3) by simply declaring an  
23 intention to start a business. *Id.* at 473. However, the debtor in *CBJ Development* was not  
24 operating the restaurant and bar at the time that the secured creditor’s motion was filed and  
25 heard. Nevertheless, the Panel noted that the debtor had operated those businesses shortly before  
26 filing its bankruptcy case (and those businesses were operated even prior to the debtor’s  
27 acquisition of the hotel) and were only closed for renovations which were being carried out  
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promptly, with a substantial amount of money invested by the debtor's investors. *Id.* Under those circumstances, the Panel concluded that the restaurant and bar could be considered in determining whether there was substantial other business activity on the property. *Id.*

As the Bankruptcy Appellate Panel in *CBJ Development* suggests, most cases have held that construction and land development activities that do not generate any significant income do not constitute substantial business activity separate from operation of the property, and therefore are "single asset real estate" within the definition of § 101(51B). In *In re Oceanside Mission Associates*, 192 B.R. 232, 236 (Bankr. S.D. Cal. 1996), the bankruptcy court concluded that "single asset real estate" includes undeveloped real property which generates no income. In *In re Kara Homes, Inc.*, 363 B.R. 399, 406 (Bankr. D. N.J. 2007), the bankruptcy court held that a group of affiliated chapter 11 debtors, each of which owned separate real estate development projects for the construction of single family residences and condominiums, qualified as single asset real estate cases. *See In re Webb MTN, LLC*, 2008 WL 656271, at \*5 (finding that "even though the Debtor has plans to develop a number of different business on the Webb Mountain Property, the plans are still part and parcel of one large land development" and holding that that the debtor was a single asset real estate debtor). *See also In re Sargent Ranch, LLC*, 2010 WL 3189714 at \*3 (Bankr. S.D. Cal. 2010) (court held that because the debtor owned undeveloped real property on which no substantial business was being conducted, the debtor had a "single project" and was a single asset real estate debtor, noting "Debtor attempts to avoid the single asset real estate label by trotting the numerous plans it has for developing the Property. However, intentions do not constitute projects. There is no disputing the fact that at the time the case was filed, as well as at the time of the hearing, every inch of every parcel of the Property, with the exception of a small portion being leased to third parties, is part of the same operation – namely, waiting and planning for future development).

The real estate owned by the debtors in *Oceanside Mission Associates*, *In re Kara Homes, Inc.*, *In re Webb MTN, LLC*, and *In re Sargent Ranch, LLC* consisted of undeveloped raw land. *See Oceanside Mission Associates*, 192 B.R. 232 (undeveloped raw land); *In re Kara*

1 *Homes, Inc.*, 363 B.R. 399 (undeveloped land upon which the debtors intended to design homes  
2 and/or condominiums), *In re Webb MTN, LLC*, 2008 WL 656271 (1,865 acres of undeveloped  
3 raw land), and *In re Sargent Ranch, LLC*, 2010 WL 3189714 (6,400 acres of undeveloped raw  
4 land). Here, the Hotel is not simply a piece of undeveloped land upon which the Debtor “hopes”  
5 to one day develop and construct income-generating businesses. The Hotel is, at this point,  
6 approximately 85% complete, with the outstanding construction work consisting of mostly  
7 “finish work” such as the installation of flooring and carpeting, lighting, appliances, trade  
8 fixtures, furniture, furnishings and equipment already purchased by the Debtor. Accordingly, the  
9 Debtor submits that the Hotel is easily distinguished from the parcels of entirely undeveloped  
10 real property owned by the debtors in the foregoing cases and should not automatically be  
11 deemed a “single asset real estate” based upon its current non-operation.

12 In addition, the Debtor is not simply a developer of the Hotel. The Debtor anticipates  
13 operating the Hotel and its related businesses, including the restaurant and bars within the Hotel  
14 premises. While the Debtor acknowledges that the Hotel is not yet complete and is not currently  
15 operating or generating any income, given the mostly completed state of construction of the  
16 Hotel, and given further the fact that, upon completion, the Debtor will be operating substantial  
17 business other than the mere ownership and management of real property (such as the operation  
18 of the hotel, restaurant, and bars), the Debtor submits that the Hotel should not be categorized as  
19 a “single asset real estate” under 11 U.S.C. § 101(51B).

20 Moreover, the Debtor has spent an extraordinary amount of money, time, and resources  
21 during the last several years developing and constructing the Hotel, and commenced its chapter  
22 11 bankruptcy case to save the Hotel from foreclosure and preserve the equity in the Hotel for  
23 the benefit of all creditors (not just Shady Bird), to obtain a “breathing spell” to obtain financing  
24 to perform the remaining 15% construction work required to complete the Hotel, and to be  
25 afforded a reasonable opportunity to restructure its financial affairs and repay its debts in an  
26 orderly fashion. As Shady Bird notes in its Motion, the designation of the Hotel as a “single  
27 asset real estate” has serious implications for the Debtor and its bankruptcy case, including the  
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1 deadlines imposed by 11 U.S.C. § 362(d)(3). It is no secret that the Debtor's efforts to  
2 reorganize will be easier, or at least subject to less intense time pressure, if the Debtor's case is  
3 *not* designated as a "single asset real estate" case. While Shady Bird tries to attribute some  
4 nefarious intent by the Debtor because the Debtor contests that the Hotel is a "single asset real  
5 estate," the Debtor believes that there are legitimate legal and factual grounds to support the  
6 Debtor's position, and the Debtor is entitled to take steps that it believes are necessary and  
7 appropriate to facilitate a successful reorganization in this case, for the benefit of all creditors  
8 (not just Shady Bird).

9 As the bankruptcy court in *In re Kkemko, Inc.*, 181 B.R. 47, 49 (Bankr. S.D. Ohio 1995)  
10 noted:

11 "[I]n enacting §§ 101(51B) and 362(d)(3), providing for extraordinary  
12 expedition in single asset real estate cases, Congress was motivated by a  
13 desire to accord relief in a particular familiar bankruptcy situation. That  
14 situation is where the owner of an encumbered building is attempting to  
15 avert loss of his building to his major lender who is grossly undersecured,  
16 and where there is no real hope that the owner can come forth with a  
17 viable confirmable Chapter 11 plan."

18 *Kkemko*, 181 B.R. at 51.

19 Here, there is substantial equity in the Hotel and Shady Bird is far from undersecured.  
20 Given the estimated fair market value of the Hotel (even in "as is" condition), there is substantial  
21 equity in the Hotel which supports the Debtor's efforts to obtain post-petition financing to  
22 complete the construction of the Hotel and to propose a feasible plan of reorganization. Under  
23 the circumstances, there is more than a reasonable possibility of a successful reorganization in  
24 the Debtor's case, and the Debtor should be provided an adequate and fair opportunity to  
25 effectuate such a reorganization.

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IV.

**CONCLUSION**

Based upon all of the foregoing, the Debtor respectfully requests that this Court enter an Order:

- (1) sustaining the Opposition and denying the Motion; and
- (2) granting such further relief as the Court deems just and proper.

Dated: April 1, 2021

THE SOURCE HOTEL, LLC



By: \_\_\_\_\_

RON BENDER  
JULIET Y. OH  
LEVENE, NEALE, BENDER, YOO  
& BRILL L.L.P.

Proposed Attorneys for Chapter 11 Debtor  
and Debtor-in-Possession

**DECLARATION OF DONALD CHAE**

I, Donald Chae, hereby declare as follows:

1. I am the Manager and a member of DMC Investment Holdings, LLC, which is the sole member of The Source Hotel, LLC, a California limited liability company and the debtor and debtor-in-possession herein (the “Debtor”), and I am therefore familiar with the business operations and financial records of the Debtor. I have personal knowledge of the facts set forth below and, if called to testify, I would and could competently testify thereto.

2. I make this declaration in support of the Debtor’s opposition (the “Opposition”) to that certain *Motion Of Shady Bird Lending, LLC For Order Designating Chapter 11 Case As Single Asset Real Estate Case Pursuant To 11 U.S.C. §§ 101(51B) And 362(d)(3)* [Doc. No. 49] (the “Motion”) filed by Shady Bird Lending, LLC (“Shady Bird”). All capitalized terms not specifically defined herein shall have the meanings ascribed to them in the Opposition.

3. On February 26, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is continuing to manage its financial affairs and operate its bankruptcy estate as a debtor-in-possession.

4. Since 2014, the Debtor has been developing the Hotel, which will include conference rooms, an executive lounge, fitness center, restaurant, bars, and cleaning services. The Hotel is part of a larger 12.8-acre mixed-use development project (the “Master Development”), which includes a 400,000 square-foot retail center and a 50,000 square-foot seven-story office building which were completed in 2016. The Debtor does not own the real property on which the Hotel is being constructed (which is located at the southeast corner of the Master Development), but is a lessee pursuant to a 99-year ground lease for such real property (the “Ground Lease”) with the Debtor’s affiliate, The Source at Beach, LLC.

5. Construction of the Hotel began in 2016. To finance the construction of the Hotel, on May 24, 2016, the Debtor obtained a \$29.5 million construction loan (the “Loan”) from Evertrust Bank (“Evertrust”) as well as financing by three tranches of EB-5 investments totaling \$35.5 million. The Debtor’s obligations under the Loan are secured by liens against substantially



1 all of the Debtor's assets, including the Hotel and the Debtor's leasehold interest in the real  
2 property that is the subject of the Ground Lease (the "Leasehold Interest"). The original maturity  
3 date for the Loan was December 1, 2017, but was extended to November 1, 2019 pursuant to  
4 written extension agreements entered into by the parties.

5 6. Through October 2019, approximately 85% of the Hotel construction had been  
6 completed, including: substantial completion of the core and shell, exterior painting, porte cochère,  
7 street lighting, ceiling framing, kitchen framing and glass block installation, food storages, all glass  
8 storefronts, electrical wiring and switchgear, guestroom flooring, ceiling fixtures, pool bar canopy  
9 structure, deck drains, window washing system, roof membrane, roof ductwork and HVAC  
10 vibration installation; nearly complete installation of bathroom fixtures (95%), acoustic ceiling  
11 system (80%), HVAC electrical connections (90%), piping for HVAC and plumbing equipment  
12 (95%), and rooftop ductwork (99%). In addition, substantial materials have been procured and/or  
13 fabricated and are ready for installation pending completion of other items, such as first and second  
14 floor flooring, corridor carpeting, millwork (wall and ceiling panels, pool bar), passenger elevators,  
15 fire sprinklers, egress and accent lighting, pool equipment, guest room doors, locks and closures,  
16 bathroom fixtures, and rooftop HVAC equipment. Current photos of the Hotel, which reflect the  
17 current state of completion of the Hotel, are attached as **Exhibit A** hereto.

18 7. The approximately 15% of the Hotel construction which remains outstanding  
19 consists of mostly "finish work" such as the installation of flooring and carpeting, lighting,  
20 appliances, trade fixtures, furniture, furnishings and equipment already purchased by the Debtor  
21 (collectively, "FF&E"). I believe that the Debtor can successfully complete the construction of the  
22 Hotel within 6-12 months with additional funding of approximately \$12,000,000 - \$16,000,000  
23 (which funding would provide for, among other things, the satisfaction of valid and effective  
24 mechanics' liens).

25 8. The Debtor is not simply a developer of the Hotel. I anticipate that the Debtor will  
26 also be the operator of the Hotel and its related businesses, including the restaurant and bars within  
27 the Hotel premises.  
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1           9.       In late 2019, Evertrust refused to issue the remaining \$4 million of the Loan,  
2       claiming a cost overrun on the construction of the Hotel. As a result of Evertrust's refusal to  
3       provide the final \$4 million of the Loan, the Debtor was forced to cease construction activities.  
4       However, I believe strongly that, had Evertrust funded the final \$4 million as expected,  
5       construction of the Hotel would have been completed, as I believe that the Debtor's contractors  
6       would have carried fifty percent of the cost overrun and the Debtor and its affiliates would have  
7       covered the remaining fifty percent of the overrun.

8           10.       When Evertrust refused to issue the remaining \$4 million of the Loan, the Debtor  
9       immediately and actively sought to refinance the Loan. The Debtor began discussions with a new  
10       lender named Hall Structured Finance ("Hall") in the fall of 2019 and was ultimately able to reach  
11       an agreement with Hall for refinancing in the total sum of \$42 million. During the course of the  
12       Debtor's refinancing discussions with Hall, the Debtor kept Evertrust apprised of all developments,  
13       and even provided Evertrust with a copy of the loan commitment letter from Hall in early 2020.  
14       The Debtor and Hall were on the verge of closing on the refinancing, with a target closing date of  
15       March 20, 2020, when local, county, and State officials issued lockdown orders as a result of the  
16       COVID-19 pandemic. At that point, Hall put an indefinite hold on the closing of the refinancing  
17       with the Debtor.

18           11.       As a result, the Debtor went back to Evertrust and, between March 2020 and  
19       December 2020, engaged in active forbearance negotiations with Evertrust to obtain a further  
20       extension of the Loan maturity date so that the Hotel could recover from the effects of the COVID-  
21       19 pandemic, and the Debtor could obtain refinancing or additional construction financing and  
22       ultimately recommence construction of the Hotel.

23           12.       In the summer of 2020, while the Debtor and Evertrust were still engaged in  
24       forbearance negotiations, Evertrust commenced litigation against the guarantors of the Loan, my  
25       brother Min Chae and I, and recorded a Notice of Default against the Hotel (the "NOD"). In light  
26       of such litigation and the recordation of the NOD, and given the ongoing COVID-19 pandemic, the  
27       Debtor requested that Evertrust convert the Loan (in the funded amount of approximately \$25  
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1 million) into a two-year term loan, and even offered to set aside one year's worth of loan payments  
2 in escrow as assurance of repayment of such two-year term loan. Evertrust declined the Debtor's  
3 offer.

4 13. During the latter half of 2020, while the Debtor was engaged in forbearance  
5 negotiations with Evertrust, the Debtor was also working actively with its loan broker, Ed Choi, to  
6 identify and obtain alternative financing for the Hotel. In November or December, 2020, Mr. Choi  
7 advised me that he had introduced Cambra Realty ("Cambra") to Evertrust to potentially purchase  
8 the Loan from Evertrust.

9 14. Ed Choi, who represented to me that he was in direct discussions with Michael  
10 Schlesinger, the principal for Cambra, regarding Cambra's pending purchase of the Loan,  
11 repeatedly assured me that, in conjunction with its purchase of the Loan, Cambra would extend the  
12 Loan maturity date for two years (at which time the Debtor could purchase back Cambra's interest  
13 in the Loan for \$24-25 million) and Cambra would provide additional construction financing of  
14 \$10-14 million so that the Debtor could complete the construction of the Hotel. I repeatedly  
15 requested that the foregoing terms be reduced to writing and were assured by Ed Choi and Mr.  
16 Schlesinger that the terms would be set forth in a written offer or term sheet. Ultimately, the terms  
17 discussed by Ed Choi, Mr. Schlesinger and me were never reduced to writing.

18 15. On December 30, 2020, I was asked to meet with Ed Choi and Mr. Schlesinger at  
19 an office building in Beverly Hills, where they introduced me to Ronald Richards for the first time,  
20 introducing him to me only as an attorney and not as the principal for Shady Bird. Unbeknownst  
21 to me, Shady Bird had just purchased Evertrust's interests in the Loan at a significant discount, for  
22 a reported purchase price of approximately \$19 million. Shortly thereafter, the Debtor was advised  
23 that Mr. Richards of Shady Bird would be the Debtor's new contact, even though Ed Choi advised  
24 me that Cambria had purchased the Loan from Evertrust.

25 16. On January 2, 2021, the Debtor received initial deal points in writing from Mr.  
26 Richards which were generally egregious and not at all reflective of the terms that had been  
27 previously discussed by the parties. On January 7, 2021, the Debtor returned a written counteroffer  
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1 which reflected the terms that I understood had been previously agreed to by the parties. In  
2 response to the Debtor's counteroffer, Mr. Richards requested information from the Debtor  
3 regarding its maintenance contracts, architectural contracts, and construction management contract  
4 with Swinerton Builders.

5 17. At this point, the relationship between the Debtor and Shady Bird was severely  
6 strained, and I feared that Shady Bird had no intention of following through with the terms that the  
7 parties had previously discussed, that Shady Bird was not engaged in negotiations with the Debtor  
8 in good faith and was instead gathering information to take the Hotel from the Debtor.

9 18. Ultimately, the Debtor's concerns about Shady Bird were validated when, on  
10 February 8, 2021, Shady Bird filed a complaint against the Debtor in the Superior Court of the  
11 State of California for the County of Orange ("Superior Court") for (i) specific performance and  
12 appointment of a receiver, and (ii) waste, thereby commencing the Superior Court action bearing  
13 the case number 30-2021-01183489-CU-OR-CJC (the "State Court Action"). Shady Bird also  
14 took steps to immediately foreclose on the Hotel and issued a Notice of a Trustee's Sale for the  
15 Hotel to be held on March 1, 2021.

16 19. Shortly after filing its complaint to initiate the State Court Action, Shady Bird filed  
17 an ex parte application for an order appointing a receiver and other related relief. On February 17,  
18 2021, the Superior Court entered an order in the State Court Action appointing Bellann R. Raile as  
19 Receiver to, among other things, take possession of the Hotel and all goods, furniture, fixtures, and  
20 equipment attached and/or related to the Hotel.

21 20. As a result of all of the foregoing, the Debtor sought chapter 11 bankruptcy  
22 protection in order to prevent the impending foreclosure of the Hotel, to regain possession of the  
23 Hotel and related assets and obtain refinancing or investments to enable the Debtor to complete  
24 construction of the Hotel, and to be afforded a reasonable opportunity to restructure its financial  
25 affairs and repay its debts in an orderly fashion.

26 21. The Debtor's primary assets consist of the Hotel, the Leasehold Interest, and the  
27 FF&E. I believe that the current value of the Hotel in "as is" condition is approximately  
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1 \$50,000,000 and that its fair market value upon completion will be at least \$60,000,000.<sup>6</sup> As  
2 reflected in the Debtor's Schedules of Assets and Liabilities filed in its case, I believe that the total  
3 value of the Debtor's FF&E (calculated at cost, excluding fabrication labor costs) is approximately  
4 \$2,700,000.

5 22. The Debtor's primary secured creditor is Shady Bird. According to the Notice of  
6 Trustee's Sale recorded by Shady Bird on February 3, 2021,<sup>7</sup> Shady Bird contends that the current  
7 balance of the Loan is approximately \$30,720,000. I am advised and believe that the Debtor's  
8 obligations under the Loan are secured by liens against substantially all of the Debtor's assets,  
9 including the Hotel, the Leasehold Interest, the FF&E, and the Debtor's cash.

10 23. There are a number of subcontractors that have recorded mechanics' liens against  
11 the Debtor and/or Hotel. As reflected in the Debtor's Schedules of Assets and Liabilities filed in  
12 its case, I believe that the total amount of the mechanics' liens recorded against the Debtor and/or  
13 Hotel is approximately \$2,900,000. Some of these recorded mechanics' liens are disputed by the  
14 Debtor. In addition, I am advised and believe that there may be a number of other mechanic's liens  
15 asserted against the Hotel; however, such purported liens do not appear to have been properly  
16 perfected and may be invalid.

17 24. The Debtor also received three tranches of EB-5 loans totaling approximately \$35.5  
18 million from Beach Orangethorpe Hotel, LLC, Beach Orangethorpe Hotel II, LLC, and Beach  
19 Orangethorpe Hotel III, LLC (collectively, the "EB-5 Lenders"). The Debtor's obligations under  
20 the loans from two of the EB-5 Lenders (*i.e.*, Beach Orangethorpe Hotel, LLC and Beach  
21 Orangethorpe Hotel II, LLC) are secured by junior liens against the Hotel and the Leasehold

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22 <sup>6</sup> An appraisal report of the Hotel dated October 14, 2019 is attached as Exhibit 4 to my  
23 declaration annexed to that certain *Opposition To Motion Of Shady Bird Lending, LLC For*  
24 *Order Excusing State Court Receiver From Turnover Of Assets Pursuant To 11 U.S.C. § 543*  
25 *filed concurrently herewith (the "Opposition to Receiver Motion")*. As reflected in the  
26 foregoing appraisal report, the Hotel was appraised at an "as is" value of \$40,900,000 as of  
October 14, 2019, was projected to have a value of \$55,800,000 upon completion, and was  
projected to have a value of \$61,300,00 upon stabilization. M+D Properties, the Debtor's  
manager, is in the process of obtaining an updated appraisal of the Hotel.

27 <sup>7</sup> Pursuant to Evidence Rule 201, the Debtor respectfully requests that the Court take  
28 judicial notice of the Notice of Trustee's Sale, which is attached as Exhibit E to the Declaration  
of Donald Chae annexed to the CC/Financing Motion [Doc. No. 21 pages 219-235 of 358].

1 Interest.

2 25. I believe that the EB-5 Lenders and the vast majority of its creditors will support  
3 the Debtor's efforts to reorganize through its chapter 11 bankruptcy case. The Debtor makes no  
4 secret of its intended exit strategy in this case. The Debtor has been, and continues to be, engaged  
5 in active discussions with numerous prospective lenders regarding the terms for debtor-in-  
6 possession financing, which will provide the Debtor with the funding necessary to complete the  
7 construction of the Hotel, service debt, and operate the Hotel until operations can be stabilized.  
8 The Debtor has already received a written commitment letter from one prospective lender for  
9 debtor-in-possession financing in the sum of \$17,900,000 but, as noted above, the Debtor is still in  
10 the process of "vetting" terms with a number of prospective lenders. The Debtor intends to finalize  
11 loan terms with a lender and file a motion for Court approval of debtor-in-possession financing in  
12 this case in an expeditious manner.

13 26. In conjunction with obtaining debtor-in-possession financing, the Debtor intends to  
14 file a plan of reorganization in this case which restructures and provides for repayment of the  
15 Debtor's secured debt (including the debt owed to Shady Bird) based upon market terms, and  
16 provides for a recovery to the Debtor's general unsecured creditors who would otherwise receive  
17 nothing (particularly upon a foreclosure of the Hotel by Shady Bird).

18 I declare under penalty of perjury under the laws of the United States of America that the  
19 foregoing is true and correct.

20 Executed this 1st day of April, 2021, at Buena Park, California.

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DONALD CHAE

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## **EXHIBIT A**

























## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled **OPPOSITION TO MOTION OF SHADY BIRD LENDING, LLC FOR ORDER DESIGNATING CHAPTER 11 CASE AS SINGLE ASSET REAL ESTATE CASE PURSUANT TO 11 U.S.C. §§ 101(51B) AND 362(d)(3)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **April 1, 2021**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Ron Bender rb@lnbyb.com
- Michael G Fletcher mfletcher@frandzel.com, sking@frandzel.com
- Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- Daniel A Lev dlev@sulmeyerlaw.com, ccaldwell@sulmeyerlaw.com; dlev@ecf.inforuptcy.com
- Grant A Nigolian grant@gnpclaw.com, process@gnpclaw.com; grant.nigolian@gmail.com
- Juliet Y Oh jyo@lnbrb.com, jyo@lnbrb.com
- Ho-El Park hpark@hparklaw.com
- Ronald N Richards ron@ronaldrichards.com, morani@ronaldrichards.com
- United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov

**2. SERVED BY UNITED STATES MAIL:** On **April 1, 2021**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

None.

☐ Service List continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **April 1, 2021**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Served via Overnight Mail**

The Honorable Erithe A. Smith  
United States Bankruptcy Court  
Ronald Reagan Federal Building and Courthouse  
411 West Fourth Street, Suite 5040 / Courtroom 5A  
Santa Ana, CA 92701-4593

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

April 1, 2021	Stephanie Reichert	/s/ Stephanie Reichert
Date	Type Name	Signature